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Message Text

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71
ACTION EUR-25

INFO OCT-01 ADP-00 CIAE-00 PM-09 INR-10 L-03 NEA-10

NSAE-00 PA-03 RSC-01 PRS-01 GAC-01 USIA-12 TRSE-00

MBFR-03 SAJ-01 DODE-00 SS-15 NSC-10 ACDA-19 OMB-01

IO-12 RSR-01 /138 W
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FM USMISSION NATO
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INFO AMEMBASSY THE HAGUE
AMEMBASSY HELSINKI

C O N F I D E N T I A L USNATO 2290

E. O. 11652: GDS, 12/31/79
TAGS: PFOR, NATO
SUBJECT: CSCE: MEETING OF LEGAL EXPERTS ON SWISS PROPOSAL TO
THE PEACEFUL SETTLEMENT OF DISPUTES

HELSINKI FOR USDEL MPT

BEGIN SUMMARY: LEGAL EXPERTS FROM ELEVEN COUNTRIES MET ON
MAY 8 FOR A GENERAL DISCUSSION OF THE SWISS PROPOSAL FOR THE
PEACEFUL SETTLEMENT OF DISPUTES. NORWAY AND LUXEMBOURG PARTICIPATED
THROUGH REGULAR POLADS. FRENCH POLAD ATTENDED WITHOUT
INSTRUCTIONS. EXPERTS PRODUCED A SUMMARY FOR POLADS OF
THE PRINCIPAL POINTS OF THE DISCUSSION WHICH WILL BE FORWARDED
SEPTEL. END SUMMARY.

1. CANADA, FRG, ITALY, BELGIUM, NETHERLANDS, NORWAY, PORTUGAL,
TURKEY EXPRESSED AGREEMENT WITH U. S. POSITION THAT EXISTING
INTERNATIONAL MACHINERY SHOULD BE UTILIZED FOR SETTLEMENT OF
DISPUTES UNDER SWISS PROPOSAL. U. K. AND GREECE EXHIBITED A
WILLINGNESS TO CONSIDER NRE MACHINERY. ONLY ICJ WAS MENTIONED
AS SUITABLE EXISTING MACHINERY FOR THIS PURPOSE. DISCUSSION
REVOLVED AROUND WHETHER EUROPEAN REGIONAL CHAMBERS UNDER ARTICLE
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26(1) OF THE ICJ STATUTE SHOULD BE UTILIZED OR AD HOC CHAMBERS
UNDER ARTICLE 26(2). SEVERAL DELS EXPRESSED DOUBT THAT ICJ
WOULD BE WILLING TO CONVENE A REGIONAL CHAMBER UNDER ARTICLE
26(1) BUT NETHERLANDS DEL COMMENTED THAT MEMBERS OF THE COURT

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HAD PRIVATELY ASSURED GON THAT ICJ WOULD TAKE THIS STEP IF REQUESTED. SEVERAL DELS POINTED OUT ADVANTAGE OF AD HOC CHAMBERS UNDER ARTICLE 26(2) IN THAT NOW ICJ RULES ALLOW FOR CONSULTATION WITH PARTIES ON COMPOSITION OF SUCH CHAMBERS WHEREAS SUCH CONSULTATION NOT NOW AVAILABLE FOR ARTICLE 26(1) CHAMBERS. NETHERLANDS DEL EXPRESSED FIRM CONVICTION' THAT ICJ WOLD ALLOW SIMILAR CONSULTATION FOR AN ARTICLE 26(1) REGIONAL CHAMBER.

2. ITALY AND U. S. SUGGESTED THAT AN AD HOC BODY MIGHT BE CONVENED BY PARTIES AS AN ALTERNATIVE IN THE EVENT ICJ UNWILLING TO CONVENE A SATISFACTORY CHAMBER.

3. BELGIUM, CANADA, U. S., FRG, GREECE, NORWAY AND PORTUGAL SUPPORTED POSITION THAT PEACEFUL SETTLEMENT MACHINERY SHOULD CONSIDER ONLY LEGAL DISPUTES CONCERNING INTERPRETATION AND APPLICATION OF AGREEMENTS ENTERED INTO OR RESULTING FROM CSCE.

4. CANADA, U. S., FRG, BELGIUM SUPPORTED FURTHER RESTRICTION THAT ONLY LEGAL DISPUTES NOT RELATED TO POLITICAL, MILITARY OR SECURITY MATTERS SHOULD BE SUBJECT TO SETTLEMENT. NETHERLANDS DEL INDIRECTLY CONCURRED SAYING THAT DISPUTES RELATING TO SUCH MATTERS SHOULD NOT BE CONSIDERED LEGAL DISPUTES.

5. ITALY, U. K., AND NETHERLANDS EXPRESSED WILLINGNESS TO ALLOW PEACEFUL SETTLEMENT MACHINERY TO HAVE JURISDICTION OVER ALL LEGAL DISPUTES BETWEEN PARTICIPANTS WHETHER OR NOT THEY AROSE FROM THE CSCE. THIS MIGHT BE ACCOMPLISHED BY GENERAL ACCEPTANCE ON PART OF ALL PARTICIPANTS OF THE COMPULSORY JURISDICTION OF THE ICJ. HOWEVER, ALL THREE AGREED THAT THE DECLARATION ON PRINCIPLES WOULD BY ITS NATURE BE IMPRECISE AND NOT A LEGAL INSTRUCMENT AND THEREFORE WOULD NOT BE A SUITABLE SUBJECT FOR SETTLEMENT OF DISPUTES. CANADA INTERPOSED THAT LIMITING JURISDICTION TO CSCE AGREEMENTS WAS ONLY REAL JUSTIFICATION FOR U. S. AND CANADIAN INVOLVEMENT IN THE SYSTEM AS OPPOSED TO INVOLVEMENT BY ANY OTHER NON- EUROPEAN STATE.

6. DANISH REP MADE POINT THAT HUMAN RIGHTS AGREEMENTS MAY NOT
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BE SUITABLE SUBJECTS FOR PEACEFUL SETTLEMENT MACHINERY IN THAT ANY RESERVATIONS ENTERED BY SOME PARTICIPANTS MIGHT PREJUDICE STATUS OF HUMAN RIGHTS CONTAINED IN SUCH AGREEMENTS. IN ANY CASE, A MIXED COMMISSION MIGHT BE A PREFERABLE FORUM FOR SETTLEMENT OF SUCH DISPUTES.

7. U. K. PRESSED POINT THAT TACTICALLY WEST WOULD DERIVE ADVANTAGE BY ALLOWING SWISS TO EXPLAIN THEIR PROPOSAL IN STAGE 2 AND LEAVING IT TO EASTERN BLOCK TO EXPRESS ITS INEVITABLE OPPOSITION. SEVERAL DELS CAUTIONED THAT SOVIETS MAY FIND ELEMENTS OF PROPOSAL ON NON- JUSTICIABLE DISPUTES WHICH THEY CAN SUPPORT WITH MODIFICATIONS AND THAT WEST SHOULD HAVE AN AGREED POSITION TO ADVANCE ON JUSTICIABLE DISPUTES ASPECT OF PROPOSAL

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ONCE SOVIETS HAD EXPRESSED OPPOSITION.

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